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STATE OF SOUTH CAROLINA

BEFORE THE PUBLIC SERVICE COMMISSION

DOCKET NO. 2018-319-E

IN THE MATTER OF: Application Duke Energy Carolinas, LLC For Adjustments in Electric Rate Schedules and Tariffs	)))))	**SOUTH CAROLINA ENERGY USERS COMMITTEE BRIEF**

Duke's rate request is excessive. Duke is entitled to the lowest reasonable rate. Duke should be granted recovery of only those costs necessary to benefit its ratepayers.

PRECONSTRUCTION COSTS

Duke Energy Carolinas, LLC ("Duke") elected to recover its nuclear plant preconstruction costs under the Base Load Review Act, S. C. Code Ann. Sections 58-33-210 et seq. ("BLRA" or "Act") The General Assembly has amended the BLRA in a manner that now prohibits Duke recovery of its preconstruction costs. Accordingly, Duke's request for recovery of its nuclear preconstruction costs should be denied.

In its application filed November 8, 2018, Duke requests a rate increase pursuant to S.C. Code Ann. Sections 58-27- 820 and 58-27-870. As a part of its application for a rate increase, Duke seeks recovery of $125 million in preconstruction costs from its abandoned Lee Nuclear Station project begun in 2007. With a return on the recovery of preconstruction costs, Duke's ratepayers would pay $20 million annually over 12 years for Duke's abandoned project to construct nuclear plants at its Lee Station.

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The General Assembly amended the BLRA in June of 2018 to prohibit the Commission from considering any request made pursuant to the BLRA in any docket not then pending before the Commission. Act R287, H4375. Duke concedes that it was prohibited from seeking recovery of its preconstruction costs pursuant to S.C. Code Ann Section 58-33-225(G) of the BLRA. (Fallon prefiled direct testimony p. 25, ll. 6-15) To avoid the prohibition of the BLRA, Duke seeks recovery of its preconstruction costs by relying on statutes predating and unrelated to the BLRA.

Facts As To Preconstruction Costs

In 2007, Duke elected to file its request under S.C. Code Ann. Section 58-33-225 of the BLRA for approval of its decision to incur preconstruction costs associated with its Lee Nuclear Station. By Order No. 2008-417 in Docket No. 2007-440-E, the South Carolina Public Service Commission ("Commission") held that Duke's decision to incur preconstruction costs was reasonable and prudent. The Commission also authorized Duke to incur the South Carolina allocable share of $230 million in preconstruction costs through December 31, 2009. Order No. 2008-417 did not rule on the prudency or recoverability of specific items of cost.

In 2011, Duke filed an amended project development application for approval of its decision to incur additional preconstruction costs to those previously authorized Order No. 2008-417. While Duke had requested authority to incur an $229 million in preconstruction costs in Docket No. 2011-20-E, the Commission only authorized Duke to incur an additional $120 million in costs, including AFUDC. Order No. 2011-454 at page 17. Order No. 2011-454 was not a blank check as Duke argues. Order No. 2011-454 approved a settlement agreement which the Commission characterized as follows: "the settling parties agreed that:

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(i) only the absolute minimum amount of dollars necessary to keep the nuclear option available should be spent and that the expenditures from January 1, 2011, though June 30, 2012, should be no more than $75 million without AFUDC and not to exceed $120 million including AFUDC; (ii) the prudency determination in this proceeding will only apply to the expenditure of these funds, and in any proceeding to recover costs, the Company must show that the activities it undertook meet the requirements set forth in the Settlement Agreement...." Order No. 2011-454, page 4. In approving the parties' settlement, the Commission ordered that its prudency determination applied "only to the South Carolina allocable share of the additional pre-construction costs of $75 million without AFUDC, not to exceed $120 million with AFUDC for the period of January 1, 2011 through June 30, 2012." Order No. 2011-454 at page 17.

By June 30, 2012, Duke had spent $251 million of the $350 million authorized by the Commission.[1] (Fallon prefiled direct at p. 32, ll. 14-18) Subsequent to June 30, 2012, Duke incurred an additional $271 million in preconstruction costs through September 30, 2018. (Fallon prefiled direct testimony at p. 33, ll. 5-7) By June 30, 2012, Duke had incurred $68 million in AFUDC. (Exhibit No. 19) Subsequent to June 30, 2012, Duke incurred an additional $180 million in AFUDC through December 31, 2017 for a total of $248 million in AFUDC costs. (Fallon prefiled direct testimony at p. 26, l. 8 – p. 27, l. 2) Duke total system balance of preconstruction costs are $518 million. Of the total balance, Duke is seeking recovery of the South Carolina allocable share of $125 million. Duke seeks annual recovery from its South

[1] In compliance to Order Nos. 2008-417 and 2011-454, Duke expended $251 million in preconstruction costs through June 30, 2012. Pursuant to the BLRA, Duke would have been entitled to recovery of $60 million.

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Carolina ratepayers of $20 million comprised of amortization expense, over 12 years, of $11 million, and a net of tax return of $9 million on the unamortized balance. (Smith prefiled direct p. 19, l.6 – p. 20, l. 2)

The preconstruction costs for which Duke seeks recovery are not used and useful to provide electricity. (Morgan prefiled direct p. 6, ll11-13) Duke concedes as much. See Application para. 17, p. 10 describing the cancelled nuclear project.

Argument As To Preconstruction Costs

The South Carolina General Assembly is vested with the constitutional authority to regulate publicly owned utilities. Article IX, Section 1 of the South Carolina Constitution reads as follows:

> Regulation of common carriers, publicly-owned utilities and privately-owned utilities serving the public. The General Assembly shall provide for appropriate regulation of common carriers, publicly owned utilities, and privately owned utilities serving the public as and to the extent required by the public interest. (1970 (56) 2690; 1971 (57) 47).

Thus the South Carolina Constitution requires the General Assembly to protect the public interest in carrying out its responsibilities with respect to public utility regulation.

Ratemaking is a legislative function. Our Supreme Court has held that,

> "[i]t has been held that rate making is not a judicial function…but is a legislative one, whether exercised by the legislature directly or by an administrative body under delegated authority, although subject to review by the courts as to legality and reasonable of its exercise…. It operates prospectively, and necessarily implies a range of legislative discretion, and ordinarily the legislative determination within the scope of discretion is conclusive." Berry v. Lindsay, 256 S.C. 282, 290, 182 S.E.2d 78, 82 (1971)

This Commission has been charged with the authority to set rates that are just and reasonable. S.C. Code Ann. § 58-3-140(A).

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In enacting the BLRA, the General Assembly provided Duke with benefits not available under traditional forms of rate making such as provided in S.C. Code Ann. Sections 58-27-820 and 870.[2] In particular, S.C. Code Ann. Section 58-33-225 provided Duke the opportunity to elect to apply to the Commission for a project development order which affirms the utility's decision to incur preconstruction cost for a propose nuclear plant.

Historically, having made the decision to build a nuclear plant, a utility would be required to request a prudency determination of its decision to construct the plants as a part of a rate case after having begun construction of the nuclear plant and having expended hundreds of millions of dollars. Thereafter, in each successive rate case to recover its nuclear construction costs, the utility would have to justify its decision to build the nuclear plant. Electing to recover its nuclear costs pursuant to S.C. Code Ann. Sections 58-27-820 and 870 created the risk to Duke that in each rate case filed to recover its nuclear construction costs (including preconstruction costs), the Commission would determine that Duke's decision to construct the plants or to continue to construct the plants was imprudent after Duke's expenditure of hundreds of millions of dollars.

The BLRA eliminated the risk of an after the fact determination of prudency by affirming the decision to incur the preconstruction costs set out in SC Code Ann. Section 58-33-220(12). The BLRA provided that the prudency of the decision to incur preconstruction

[2] The title of the BLRA provides in part that the purpose of the Act was to "TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARITCLE 4 TO CHAPETER 33, TITLE 58 SO AS TO ENACT THE 'BASE LOAD REVIEW ACT'BY **REVISING** PROCEDURES FOR APPROVING COSTS ASSOCIATIED WITH THE ADDITION OF BASE LOAD GENERATION PLANTS….." Emphasis added.

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costs may not thereafter be challenged.[3] The upfront prudency determination permitted by the BLRA is invaluable.

Subsequent to the abandonment of the nuclear plants under construction in Jenkinsville, S. C. by SCE&G, the General Assembly took a hard look at the BLRA and after much study, amended the BLRA to prevent its future application. In particular, the General Assembly prohibited the Commission from accepting an application for relief under the BLRA in any future proceeding. R287, H4375 was enacted which provides:

> SECTION 2.A. As of the effective date of this act, the Public Service Commission must not accept a base load review application, nor may it consider any request made pursuant to Article 4, Chapter 33, Title 58 other than in a docket currently pending before the Commission.

R287, H4375 became effective June 28, 2018. The application in the instant docket was filed November 8, 2018. The Commission was precluded from considering a request for recovery of preconstruction costs pursuant to the BLRA.

The General Assembly's repeal of the BLRA was in all respects lawful and constitutional. The preconstruction costs for which Duke seeks recovery are not used and useful for utility purposes. In repealing the provisions of the BLRA which authorized recovery of preconstruction costs, the General Assembly intended to prohibit recovery of those nuclear costs which were not used and useful. A similar statute was upheld by the United States Supreme Court in *Duquesne Light Co. V. Barasch,* 488 U. S. 299 (1989); see SCAG Opinion September 26, 2017 at pages 43-46.

[3] The prudency of individual items of cost or decisions subsequent to the issuance of a project development order may be challenged. S.C. Code Ann. Section 58-33-2225(E).

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Duke now seeks to circumvent the repeal of the BLRA by seeking recovery of its preconstruction costs after it has expended them by filing its application for recovery of preconstruction costs pursuant to S.C. Code Ann. Sections 58-27-820 and 870. Duke is estopped from recovery of its preconstruction costs.

Duke elected to file for a project development order pursuant to the BLRA because the Act afforded Duke the protection of an initial prudency determination which no other rate statute provides. In electing to be governed by the BLRA, in Docket No. 2007-440-E, Duke complied with the provisions of S.C. Code Ann. Section 58-33-225(A), (B) and (C). Order No. 2008-417 approved Duke's application affirming its decision to incur nuclear generation preconstruction costs. Duke continues to comply with the terms of Order Nos. 2008-417 and 2011-454. The BLRA set out in clear an unambiguous term the manner in which Duke might elect to come under the BLRA so as to eliminate any uncertainty as to whether the rights of the utility and ratepayers would be governed by the BLRA or by other rate making statutes. Duke's election to proceed under the BLRA was clear and unequivocal. *Carter v. Associated Petroleum Carriers*, 235 S.C. 80, 110 S.E.2d 8 (1959).

The nature of the proof required of Duke pursuant to S.C. Code Ann Section 58-33-225 and S.C. Code Ann. Sections 58-27-820 and 870 is inconsistent.[4] Having succeeded in electing to avail itself of the benefits of the BLRA, Duke is estopped from now filing pursuant to S.C. Code Ann. Sections 58-27-820 and 870 which require proof of a different statement of

[4] The inconsistency does not lie in the remedies Duke has invoked, but in the different statements of fact and remediable rights asserted in the respective dockets. *White v. Livingston,* 234 S.C. 74, 79, 106 S.E.2d 892(1959)

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facts and remediable rights. *White v. Livingston,* 234 S.C. 74, 106 S.E.2d 892(1959); *Lawson v. Rogers*, 312 S.C. 492, 435 S.E.2d 853 (1993).

Consequently, having elected to recover its preconstruction costs pursuant to the BLRA, Duke is now foreclosed from recovering these costs. After much controversy over the abandonment of construction of the VC Summer and Lee Station plants, the General Assembly repealed the BLRA. First, the South Carolina Attorney General opined that the BLRA was constitutionally suspect, in part because it upended the concept of "used and useful" which the opinion described as a bedrock principle of rate making SCAG Opinion September 26, 2017 at pages 4-5, 46. [5] Because S.C. Code Ann. Section 58-33-225 authorizes the recovery of capital costs that are not used and useful, the General Assembly chose to repeal the application of S.C. Code Ann. Section 58-33-225 in proceedings arising after June 28, 2018. *Duquesne Light Co. V. Barasch, supra*; see SCAG Opinion September 26, 2017 at pages 43-46.

For the Commission to construe the repeal of S.C. Code Ann. Section 58-33-225 to permit Duke recovery of its preconstruction costs leads to an absurd result. First, Duke seeks $125 million in preconstruction costs when the Commission has only authorized Duke recovery of approximately $60 million in costs. Second, Duke seeks a return on these costs which over the 12-year amortization period would require Duke's South Carolina rate payers to pay $240 million or four times the amount of preconstruction costs authorized prior to the repeal of the BLRA. The General Assembly was aware of Duke's election to recover its costs pursuant to the BLRA and intended to foreclose recovery when it repealed the Act. To construe

[5] The Attorney General found the BLRA constitutionally suspect as constituting an unlawful taking SCAG Opinion, September 26, 2017 at pages 46 et seq.

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the repeal of the BLRA to authorize a recovery even greater than that authorized under the BLRA leads to an absurd result that the General Assembly never intended. The impact of the General Assembly's repeal of the BLRA on Duke is the elimination of $20 million annually on a company with annual revenues of $1.7 billion which is not material. Accordingly, Duke's request for recovery of its preconstruction costs should be denied in its entirety.

COAL ASH COST RECOVERY

Duke seeks recovery of the cost to dig up a coal ash pond at WH Lee that was functioning as intended and was in compliance with all environmental regulations. In addition, Duke seeks to impose inflated coal ash remediation costs imposed on the utility by the North Carolina General Assembly in response to a disastrous coal ash spill on the Dan River for which Duke was convicted by the federal government. In both instances, Duke seeks to impose costs on its ratepayers which provide them with no tangible benefit.

WH Lee

Duke's total cost to ratepayers for excavating its WH Lee coal ash pond is expected to be $278.5 million, of which Duke seeks to recover $98.5 million from ratepayers in this docket (Wittliff direct p. 39, Table 5.4). However, these costs were not imposed on Duke by South Carolina regulatory authorities. Rather, Duke volunteered to undertake the costly excavation of the coal ash pond at its Lee site and requested that the South Carolina Division of Health and Environmental Control (DHEC) enter an agreement to justify the recovery of the costs.

The Commission is being asked to surrender its authority to set rates to DHEC which has no authority to set rates and which acts without regard to the interests of Duke's ratepayers.

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The Commission must exercise its authority to protect Duke's ratepayers from unnecessary and imprudent costs.

It is undisputed that the WH Lee coal ash pond was not subject to regulation by either the Environmental Protection Agency's Coal Combustion Residual rule ("CCR") or the North Carolina Coal Ash Management Act or CAMA.

There would have been no reason to remediate the WH Lee coal ash pond except that in its rush to put its environmental disaster on the Dan River behind it, Duke solicited a consent agreement from DHEC to allow Duke to excavate its WH Lee coal ash pond. Not wishing to look a gift horse in the mouth as ORS witness Wittliff explained, DHEC entered into a consent agreement with Duke to excavate the WH Lee coal ash pond.

Consent Agreement 14-13-HW is an oddity. It is obvious from the consent agreement that Duke was in compliance with its permit of the existing coal ash pond. The Findings of Fact in the consent agreement reveal no violations of DHEC regulations. There is no record of seeps or spills. There is no record of surface water or ground water contamination. Consent Agreement 14-13-HW at p. 2.

What's worse, at the time of its consent order with DHEC, Duke had completed two engineering studies of its WH Lee coal ash pond, neither of which recommended excavation. Duke's engineering firm Soils and Materials Engineers (S&ME) recommended on September 12, 2014 that Duke merely monitor its WH Lee coal ash pond. Subsequently, on June 30, 2015, nine months after the consent agreement, Duke's engineers URS found no coal as pond dam safety issues requiring immediate attention. (O'Donnell prefiled direct at page 40, l. 22 – p. 41, l.19).

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The consent agreement offers still more insight into the nature of the transaction between Duke and DHEC. Because the WH Lee coal ash pond was in compliance with DHEC regulations, DHEC had no authority or other leverage over Duke to order Duke to remediate the coal ash pond. To take advantage of Duke's offer to excavate the coal ash pond, DHEC was forced to act by agreement, negotiated at arm's length. Consent Order 14-13-HW was therefor the result of a negotiated process whereby the regulator was forced to agree to covenant not to sue. Order 14-13-HW at p. 8. Had DHEC been acting pursuant to its statutory authority to close the coal ash pond, a covenant not to sue would have been unnecessary. See S.C. Code Ann. § 44-96-450. In addition, because DHEC was not acting under its regulatory authority, DHEC was forced to include language in the consent order granting it authority to inspect the remediation performed at the site. Had DHEC been acting pursuant to its regulatory authority, it would have been able to rely upon S.C. Code Ann. § 44-96-260 (4) for authority to enter upon the coal ash pond and inspect for compliance with State law. Instead, DHEC was forced to rely upon common law contractual concepts to accomplish the goal of closing the coal ash pond. DHEC may have been acting in its interests to agree to the terms of the consent agreement, but the agency was not acting in the interests of ratepayers.

Because DHEC is not required to consider the cost of its enforcement actions on the utility, Consent agreement 14-13-HW is silent as to the financial impact on Duke and its ratepayers. However, the Commission is charged with assessing the impact of a DHEC order on a utility's ratepayers and this Commission has exercised its authority to protect ratepayers from excessive measures imposed by DHEC. See Order No. 2004-203 in Docket No. 2003-218-S. Here, the existence of a DHEC consent agreement does not compel a decision by the

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Commission to force Duke's ratepayers to pay for the unnecessary excavation of the WH Lee coal ash pond.

The evidence reflects that Duke rushed to judgment to eliminate the WH Lee coal ash pond without regard to the need to remediate the pond and without regard to the cost to ratepayers. The only inference from the record is that it was totally unnecessary to excavate the WH Lee coal ash pond. In closing the WH Lee coal ash pond, Duke behaved imprudently. Forcing Duke's ratepayers to pay $278.5 for this unnecessary expense shocks the conscience. Duke should be denied recovery of the cost of excavating the WH Lee coal ash basin.

CAMA

The excessive cost of Duke's coal ash remediation will take a toll on its customers. Using a 20 MW manufacturing load with an 85% load factor, the cost to the DEC manufacturer would be $132,837 as opposed to the average cost in other southeastern states of $70,160. The cost disparity for DEP customers is even greater as this same 20 MW load with an 85% load factor would have annual costs of $322,859. (O'Donnell prefiled direct at p. 49, ll. 4-13).

Duke's coal ash costs are excessive, due in part to the fact that it has been required by North Carolina legislation CAMA to excavate its coal ash ponds when compliance with the Environmental Protection Agency CCR's would have permitted Duke to remediate its coal ash ponds more cheaply but as effectively. This Commission is under no obligation to enforce North Carolina legislation. CAMA was enacted in response to the disastrous Dan River spill. The North Carolina General Assembly determined that the electric utilities operating within its borders would be held to a higher standard than that set by the EPA in promulgating its

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CCR regulation. North Carolina residents should be made to pay the costs imposed on them by the North Carolina General Assembly.

Allocation standards established by this Commission require that South Carolina residents be protected from the unnecessarily burdensome North Carolina Costs. The Commission's precedent in allocating the unnecessarily costly North Carolina renewable energy standards is controlling here. As ORS witness Seaman-Huynh explained, it is common practice for utilities operating in multiple jurisdictions to assign the costs related to certain accounts directly to one jurisdiction, especially if the costs are derived from laws and regulations that are specific to that jurisdiction. Examples include Act 236 Distributed Energy Resources (South Carolina) and the North Carolina Renewable Energy and Energy Efficiency Portfolio Standard Act ("REPS"). (Seaman-Huynh prefiled direct p. 6, ll. 7-20). See Order No. 2009-695 in Docket No. 2009-3-E.[6] Duke has recovered its REPS cost on this basis since.

When normalized for the difference in coal ash generation across the country, DEC and DEP stand out as having two of the three highest coal ash AROs per kWh of generation. See Table 9 of O'Donnell's prefiled direct testimony at p. 48.

[6] Order No. 2009-696 approved a settlement authorizing Duke to recover only the avoided cost associated with its REPS costs. Duke witness McManeus testified, "[d]uring the billing period the Company expects to generate and purchase renewable energy to comply with North Carolina General Statutes § 62-133.8 ("Renewable Energy and Energy Efficiency Portfolio Standard"). The proposed fuel factors include renewable energy generated by the Company or purchased from third party suppliers priced at the Company's avoided fuel cost of 4.91 cents per kWh.2 The use of avoided fuel costs results in neither advantaging nor disadvantaging South Carolina retail customers with respect to Duke Energy Carolinas' requirement to supply a portion of its North Carolina retail sales from renewable energy resources".

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Table 9: Coal Ash ARO per KWH of Generation

Rank	Company	Calculated ARO per kWh of Generation
1	Duke Energy Progress, LLC	$ 0.002168
2	Mississippi Power Company	$ 0.001392
3	Duke Energy Carolinas, LLC	$ 0.000892
4	Georgia Power Company	$ 0.000860
5	Duke Energy Indiana, LLC	$ 0.000697
6	Virginia Electric and Power Company	$ 0.000551
7	Gulf Power Company	$ 0.000298
8	Arizona Public Service Company	$ 0.000290
9	Alabama Power Company	$ 0.000274
10	Kentucky Utilities Company	$ 0.000274
11	Kansas Gas and Electric Company	$ 0.000254
12	Public Service Company of New Mexico	$ 0.000147
13	Kansas City Power & Light Company	$ 0.000145
14	DTE Electric Company	$ 0.000123
15	Portland General Electric Company	$ 0.000123
16	Indiana Michigan Power Company	$ 0.000071
17	Duke Energy Florida, LLC	$ 0.000063
18	CLECO	$ 0.000057
19	Florida Power & Light Company	$ -
20	Entergy Arkansas, LLC	$ -

However, Duke's coal ash liability was not unknown to the utility. In as early as October 1981, the Electric Power Research Institute (EPRI) published a manual entitled "Coal Ash Disposal Manual Second Edition" dealing with existing coal ash storage and disposal facilities warning utilities of the serious environmental issues associated with coal ash disposal. (O'Donnell prefiled direct p. 43, l. 14 – p.44, l. 17). ORS Witness Wittliff outlines the advance warning about the dangers of coal ash ponds. (Wittliff prefiled direct p. 9, l. 17 – p. 15, l. 4).

Duke failed to heed these warnings and did nothing to begin address its coal ash liability. Duke did not establish AROs associated with coal ash until the promulgation of

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CAMA and the CCR in 2014. (O'Donnell prefiled direct testimony p. 43, ll. 14 – 24). In the aftermath of the environmental disaster at its Dan River Plant in 2014, Duke now asks its current and future customers to pay for expenses incurred to serve prior customers. To add insult to injury, Duke is asking its South Carolina customers to pay for excessive and unnecessary costs required by the North Carolina General Assembly reacting to the Dan River catastrophe.

Stockholders need to be held accountable for the actions of Duke executives that led to the Dan River spill that led, in turn, to the passage of CAMA. Given the fact that the DEC coal ash costs are so much higher than utilities operating in a similar manner, the Commission should disallow 75% of Duke's coal ash request as recommended by SCEUC witness O'Donnell and put these costs to Duke's stockholders.

REAL TIME PRICING

The Commission should require Duke to offer its customers competitive hourly pricing rates. Duke's hourly pricing should be set at the lower of the Company's marginal cost or the price as set by the open wholesale power market, as adjusted for transmission costs and line losses to move the power to the DEC service territory.

Duke operates a closed system as it relates to its hourly prices to consumers. The price offered to consumers on an hourly basis is the DEC marginal cost for its generation. However, at the same time DEC is selling marginal cost power to its RTP customers, the Company is also operating in the competitive wholesale power market where opportunity purchases and sales are being made. Accordingly, there may be times when Duke's marginal cost of power offered to its manufacturing customers is greater than the price the Company could pay for that

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same power in the open wholesale market. Because Duke prices its RTP rates at its own marginal costs, manufacturers are paying higher costs than necessary. Further, by failing to take advantage of lower cost power on the wholesale market, Duke is also needlessly running its higher cost generating plants adding to higher fuel costs paid by all consumers. (O'Donnell prefiled direct at p. 50, l. 29 – p.51, l. 13).

The impact on Duke's customers is significant. A manufacturer with a 20 MW load in Duke's territory would have paid an additional $2.5 million for electricity, excluding transmission costs, than had the manufacturer purchased that same power from the Dominion Hub. (O'Donnell prefiled direct p. 53, ll. 1-8)

The General Assembly has vested its authority to regulate public utilities in the South Carolina Public Service Commission. S.C. Code Ann. § 58-3-140(A) reads as follows:

> (A) Except as otherwise provided in Chapter 9 of this title, the commission is vested with power and jurisdiction to supervise and regulate the rates and service of every public utility in this State and to fix just and reasonable standards, classifications, regulations, practices, and measurements of service to be furnished, imposed, or observed, and followed by every public utility in this State. S.C. Code Ann. § 58-3-140(A).

Duke's high RTP costs should be designed to create a competitive manufacturing marketplace in South Carolina. SCEUC would urge the Commission to fix Duke's RTP rates to compete with the market and to reduce the costs to manufacturers.

REMAINING ISSUES

With respect to the remaining issues to be addressed in this docket not hereinabove briefed and argued, SCEUC supports those positions of the ORS that do not conflict with SCEUC's positions set out above and those set out at trial.

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CONCLUSION

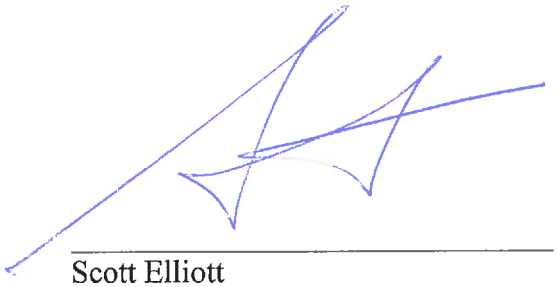
The Dan River coal ash spill in North Carolina in 2014 set into motion a series of events that threaten to drive Duke's rates for a generation. Reacting to public outcry over the Dan River spill, the North Carolina General Assembly passed an unnecessarily expensive measure intended to prevent future spills. Reacting to the excesses of the North Carolina General Assembly, the North Carolina Public Utilities Commission, authorized recovery of unnecessarily expensive coal ash remediation measures. Reacting to the excesses of the North Carolina General Assembly, the North Carolina Department of Environmental Quality, has now upped the stakes for Duke's customers doubling the Duke's estimated coal ash costs from $5.6 billion to $10 billion. Reacting to the excesses of the North Carolina General Assembly Duke persuaded a willing DHEC to authorize the remediation of the totally compliant WH Lee coal ash pond at a cost of $278.5 million.

South Carolina ratepayers should not be held hostage to North Carolina politics. There is no reason why South Carolina ratepayers should pay more coal ash costs than necessary.

The Environmental Protection Agency, acting with more discipline and restraint, promulgated less costly regulations governing coal ash ponds. The EPA CCR rules adequately protect against mismanaged coal ash ponds. South Carolina ratepayers should pay no more than the EPA CCR rules require.

In addition, Duke's decision to excavate the WH Lee coal ash pond was not justified by the facts or the law. There was simply no reason to excavate the WH Lee coal ash pond which was being properly managed and operated under DHEC's regulatory oversight. Forcing South Carolina ratepayers to pay for Duke's recklessness is neither just nor reasonable.

For the reasons set out above, the Commission should act to protect Duke's South Carolinas ratepayers.



Scott Elliott
Elliott & Elliott, P.A.
1508 Lady Street
Columbia, SC 29201
Tel.: 803-771-0555
Fax: 803-771-8010

Attorney for South Carolina Energy Users Committee

Columbia, South Carolina

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